

Administrator cannot compel third party not interested in estate to come into the Orphans' Court to have dispute between it and administrator determined. *Dulin v. Talbot Bank*, 163 Md. 296.

In issues transmitted to it by Orphans' Court, the Circuit Court has limited statutory jurisdiction under this section and sec. 265. *Holland v. Enright*, 167 Md. 604; 169 Md. 394.

Purpose of this section. This section and sec. 265 only apply where there are matters in issue between parties, and not to cases where there is no dispute concerning facts. *Cain v. Warford*, 3 Md. 462.

The act of 1892, ch. 275, authorizes process by summons, order of publication or attachment, to compel appearance in all cases of controversy in orphans' court. How and when a will may be set aside upon its probate after contest. Parties. *Laches. McCambridge v. Walraven*, 88 Md. 383.

Plenary proceedings and an answer under oath may be demanded at any stage of proceedings before final adjudication. *Humes v. Shillington*, 22 Md. 358.

Plenary proceedings in pursuance of this and the two following sections, prayed. See notes to art. 46, sec. 3. *Wilson v. Jarrell*, 137 Md. 564.

The answer must be under oath, and the defect is not waived by arguing the case before the dismissal of the petition. *Cover v. Stockdale*, 16 Md. 7.

This section referred to in construing sec. 245—see notes thereto. *Conner v. Ogle*, 4 Md. Ch. 451.

Cited but not construed in *Campbell v. Porter*, 162 U. S. 483.

See notes to secs. 235 and 265.

An. Code, 1924, sec. 264. 1912, sec. 255. 1904, sec. 254. 1888, sec. 250. 1798, ch. 101, sub-ch. 15, sec. 17. 1886, ch. 498.

**265** On such plenary proceeding, all the depositions shall be taken in writing and recorded, and, if either party require it, the court shall direct an issue or issues to be made up and sent to any court of law convenient for trying the same, and the issues shall be tried in the said court of law as soon as convenient, without any continuance longer than may be necessary to procure the attendance of witnesses; and the power of the court of law and the proceedings thereto relative shall be as directed by law respecting the trial of issues, and the orphans' court shall give judgment or decree upon the bill and answer and depositions or the finding of the jury, and may in all cases of contest award costs, in their discretion, and compel payment by attachment and fine, or by attachment and sequestration, or by *feri facias*.

#### Issues.

Issue as to caveator's knowledge of facts affecting integrity of will, when he accepted legacy thereunder, should have been granted. *Schmidt v. Johnston*, 154 Md. 133.

This section does not authorize denial of issues on ground that motives cannot be approved. *Garner v. Garner*, 167 Md. 428.

See notes to secs. 264 and 252.

This section does not require orphans' court to send issues to a court of law for a determination of questions such as reopening of an account for alleged improper allowances, when that investigation is being made under a plenary proceeding and parties had elected to try question before orphans' court. See notes to sec. 254. *McAvoy v. Renehan*, 116 Md. 336.

Purpose of this section. The duty of orphans' court to make up and transmit issues when required is imperative, and findings of court of law are final and must be made effective by orphans' court. *Price v. Taylor*, 21 Md. 363. And see *Pleasants v. McKenney*, 109 Md. 277; *Keene v. Corse*, 80 Md. 23; *Sumwalt v. Sumwalt*, 52 Md. 346; *Worthington v. Ridgely*, 52 Md. 355; *Waters v. Waters*, 26 Md. 72; *Humes v. Shillington*, 22 Md. 358; *Cook v. Carr*, 20 Md. 410; *Warford v. Colvin*, 14 Md. 552; *Pegg v. Warford*, 4 Md. 396; *Cooke v. Cooke*, 29 Md. 552.

Where issues have been tried and a verdict rendered, other persons (though not parties to first case) are not entitled to issues involving substantially same questions. *McCumbridge v. Walraven*, 88 Md. 380; *Pleasants v. McKenney*, 109 Md. 277; *Worthington v. Gittings*, 56 Md. 548; *Sumwalt v. Sumwalt*, 52 Md. 346; *Worthington v. Ridgely*, 52 Md. 355; *Pegg v. Warford*, 4 Md. 394; *Warford v. Van Sickle*, 4 Md. 399. Cf. *Munnkhuyzen v. Magraw*, 35 Md. 280.

The dismissal of one set of issues before trial in a court of law is not a bar to subsequent issues. *Levy v. Levy*, 28 Md. 29; *Price v. Moore*, 21 Md. 373. And see *Price v. Taylor*, 21 Md. 363.